(1) Supreme Court, U.S.
FILED
No. _____
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OFFICE OF THE CLERK

In The

Supreme Court of the United States

AMR MOHAMMED KHALIL,
AGENCY CASE NO. A 79 701 674,

Petitioner,

v.

ATTORNEY GENERAL USA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

AMR KHALIL
Petitioner
39 Duncan Avenue, #7A
Jersey City, NJ 07304
201-936-2373

QUESTION PRESENTED

Did the Circuit Court's failure to interpret Section 1245.10 of the Title 8 of the Code of Federal Regulations and failure to apply Section 245(i) of the Immigration and Nationality Act for the Adjustment of Status of the Appellant?

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PETITION FOR WRIT OF CERTIORARI BEFORE UNITED STATES SUPREME COURT

Applicant Pro Se respectfully submits this petition for Writ of Certiorari to be considered by the Supreme Court.

OPINIONS BELOW

The opinions in the Court of Appeals and Board of Immigrations Appeals were unpublished.

JURISDICTION

The Third Circuit decided this case on February 5, 2009 and the Petition for Writ of Certiorari will be filed within 90 days to the Supreme Court. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Appellant is statutorily eligible for Adjustment of Status under INA § 245(i)(2)(B) and 8 U.S.C. § 1255(i)(2)(B).

STATEMENT OF THE CASE

Briefly stated the facts of this case are as follows:

I was placed in removal proceedings before the Immigration Court at Newark, NJ. I had filed for labor certification which was pending before the US Department of Labor. My counsel Jeffery N. Lisnow Esq. requested the Immigration Court for continuation so that the labor certification could be approved and I could file for adjustment of status before the Immigration Court as my relief. But the Court denied the request and ordered me to be removed from the United States.

My counsel filed a timely appeal against this decision with the Board of Immigration Appeals. While this appeal was pending before the BIA, my employer filed a new application for labor certification under the new law called PERM with the US Department of Labor. The new labor certification was approved on June 15, 2006 and on basis of this approved labor certification, my employer filed an I-140 petition for me. This I-140 petition was approved on April 19, 2007.

After the approval of I-140 filed on my behalf, I was eligible to adjust my status because my same employer had filed a labor certification for the same occupation of Cook with a priority date of April 30, 2001; case no. A-05284-41117. That labor certification couldn't be approved due to technical issues and my new attorney filed my new labor certification which

was approved with a priority date of May 15, 2006; case no. A-06135-17792.

That I am eligible to adjust under the grandfather clause because my previous labor certification has a processing date of April 30, 2001 which gives me the right to adjust my status under section 245(i) of the Act after paying a fine of $1000.00 which I am willing to pay.

Section 1245.10 of Title 8 of the Code of Federal Regulations Provides:

(a) *Definitions*: As used in this section the term:

1.

i. *Grandfathered alien* means an alien who is the beneficiary (including a spouse or child of the alien beneficiary if eligible to receive a visa under section 203(d) of the Act) of:

A AA petition for classification under section 204 of the Act which was properly filed with the Attorney General *on or before April 30, 2001* and *which was approvable when filed;* or

B An application for labor certification under section 212(a)(5)(A) of the Act that was properly filed pursuant to the regulations of the Secretary of Labor *on or before April 30, 2001* and

which was approvable when filed.

ii. If qualifying visa petition or application for labor certification was filed after January 1, 1998, the alien must have been *physically present in the United States on December 21, 2000.* This requirement does not apply with respect to a spouse or child accompanying or following to join a principal alien who is a grandfathered alien as described in this section.

2. *Properly filed* means:

i. With respect to a qualifying immigrant visa petition, that the application was physically received by the Service on or before April 30, 2001, or if mailed was postmarked on or before April 30, 2001, and accepted for filing as provided in § 103.2(a)(1) and (a)(2) of 8 C.F.R. chapter; and

ii. With respect to a qualifying application for labor certification that the application was properly filed and accepted pursuant to the regulations of the Secretary of Labor 20 C.F.R. 656.21.

3. *Approvable with filed* means that, *as of the date of the filing of the qualifying immigrant visa petition* under section 204 of the Act or qualifying application

> or labor certification, *the qualifying petition or* application *was* properly filed, *meritorious in fact,* and non-frivolous ("frivolous" being defined herein as patently without substance). *This determination will be made based on the circumstances that existed at the time the qualifying petition or application was filed.* A visa petition that was properly filed *on or before April 30, 2001* and was *approvable when filed,* but was *later withdrawn,* denied, or *revoked due to circumstances that have arisen after the time of filing,* and will *preserve the alien beneficiary's grandfathered status* if the alien is otherwise *eligible to file an application for adjustment of status under section* 245(i) of the Act.

That I fulfilled both the conditions of section 1245.10, a labor certification should have been filed on or before April 30, 2001 and the applicant must have been physically present in the United States prior to December 20, 2000. A letter from the Department of Labor states that my application was filed on 04/30/2001. I was present in the United States prior to December 20, 2000 because I entered the United States on 07/11/2000 on B2 visa. As such, I am eligible to file for adjustment of status under section 245(i) under the grandfather clause.

I couldn't file my I-485 with the USCIS because of lack of jurisdiction. My file was with the Board of

Immigration Appeals. As such, the USCIS has no jurisdiction. So I followed the proper procedure and filed a motion to remand my case with the BIA.

That a visa number in my category was available when I filed the remand motion.

Unfortunately, the decision on my remand motion was delayed by the BIA and in the meantime, visas in my category became unavailable. Later on, the Board of Immigration Appeals denied my motion to remand stating that the visa number was not available in my case. It is common practice before the Immigration Courts that if a person is eligible to adjust but his visa number is not available; the respondents are granted continuation so that the visas become available.

The BIA has erred and didn't remand my case and didn't provide me the opportunity to file for adjustment of status. That I filed a motion to reopen and reconsider with the Board of Immigration Appeals to reconsider its order of denial to remand my case but this motion was also denied.

REASONS WHY THE WRIT SHOULD BE GRANTED

I am eligible to adjust under section 245(i) of the Act because a labor certification was filed on my behalf prior to April 30, 2001. That although my new labor certification filed under PERM was approved with a priority date of May 15, 2006, still under section 1245.10(a)(b) of the Immigration & Nationality Act, I am eligible to adjust under the grandfather clause because a labor certification was filed on my behalf prior to April 30, 2001.

That my petition should be granted on the following grounds:

1. That I have a definite relief of adjustment of status available to me as a labor certification has been approved and the USCIS has approved the visa petition I-140 filed on my behalf.

2. That I am otherwise eligible to adjust and there is no bar against me for my adjustment.

3. That I have lived in the United States since July 11, 2000.

4. That all the equities are in my favor.

5. That I am a hardworking person and have paid my taxes.

6. That there is no criminal record against me and I am a peace loving person.

7. That my removal from the United States will cause me extreme hardship because it'll be quite impossible for me to get my visa from abroad.

8. That in the interest of justice, discretion should be exercised in my favor.

Wherefore it is requested that the petition for Writ of Certiorari be approved and my case be remanded back to the Immigration Court so that I can file for my adjustment of status.

CONCLUSION

For all of the foregoing reasons petitioner submits that a Writ of Certiorari should be granted.

Respectfully submitted,

AMR KHALIL

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-2961

AMR MOHAMMED KHALIL,

Petitioner

v.

ATTORNEY GENERAL OF THE UNITED STATES

Petition for Review of an Order of the
United States Department of Justice
Board of Immigration Appeals
(Agency No. A79-701-674)
Immigration Judge: Frederic G. Leeds

Submitted Pursuant to Third Circuit LAR 34.1(a)
February 2, 2009

Before: RENDELL, FUENTES and
NYGAARD, Circuit Judges

(Filed: February 5, 2009)

OPINION OF THE COURT

PER CURIAM

Petitioner Amr Mohammed Khalil, a native and citizen of Egypt, entered the United States on July 11, 2000 at New York, New York as a nonimmigrant visitor. On August 5, 2002, a Notice to Appear was filed in Immigration Court which charged that he was removable under Immigration & Nationality Act ("INA") § 237(a)(1)(B), 8 U.S.C. § 1227(a)(1)(B), as an alien who had remained in the United States for a time longer than permitted. His counsel sought and received a number of continuances to allow him the opportunity to have his labor certification approved. Finally, a hearing was held on February 15, 2006, and Khalil, through counsel, admitted the allegations contained in the Notice to Appear and conceded removability. Evidence relating to the adjudication of his labor certification was admitted before the Immigration Judge, who then granted a continuance until May 25, 2006. At the hearing on May 25, 2006, Khalil requested another continuance pending adjudication of the labor certification. In an oral decision dated that same day, the IJ determined that any further continuances were not warranted. The labor certification still was not approved, and the government would not consent to administrative closure. Khalil was ordered removed to Egypt.

Khalil appealed to the Board of Immigration Appeals, arguing that the IJ abused his discretion in denying another continuance. He later moved to remand when a labor certification and I-140 visa petition were approved, arguing that he was eligible to

apply for adjustment of status. In support of the motion to remand, he submitted a Form I-797C, Notice of Action, indicating that he was the beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140). In a decision dated October 10, 2007, the Board dismissed Khalil's appeal and denied his motion to remand. The Board concluded that the IJ had not abused his discretion in denying any further continuances, because the case had been continued several times and the labor certification had not been approved.

As to the motion to remand, the Board found that, on April 30, 2001, the employer OSRIF filed a labor certification on behalf of another alien, and Khalil was substituted for that alien in February 2004. In June 2005, the employer Port Said Food and Halal Meat filed an application for a labor certification on Khalil's behalf. At this time an I-140 also was filed on his behalf and it was approved in April 2006 with a priority date of May 15, 2006. Based on these findings the Board made the following legal determinations. First, although the regulations provide that a beneficiary whose visa petition for labor certification was filed on or before April 30, 2001, and which was approvable when filed, would be deemed a "grandfathered" alien, 8 C.F.R. § 1245.10(a), (b), an alien who was substituted for the previous beneficiary will not be considered a grandfathered alien, 8 C.F.R. § 1245.10(j). Because Khalil was substituted in February 2004 for the previous beneficiary, he could not take advantage of the April 30, 2001 priority date

and would not be deemed a grandfathered alien. Furthermore, the current cut-off date for employment-based visas was August 1, 2002. Because Khalil's priority date of May 15, 2006 was after the current cut-off date, a visa was not immediately available to him as required by statute, and he thus was not eligible to adjust his status.[1] A remand therefore was unwarranted.

Represented by new counsel, Khalil filed a timely motion for reconsideration and motion to reopen. He attached to his motion to reopen an affidavit and correspondence from the Department of Labor, dated October 14, 2005, indicating that his current employer, Port Said Food's labor certification application was received on April 30, 2001. In a decision dated February 19, 2008, the motion to reconsider and reopen was denied. With respect to the timely motion for reconsideration, the Board concluded that Khalil had merely reiterated his previous arguments. But the Board had not overlooked any argument or aspect of the case, and thus reconsideration was not warranted. *See Matter of Cerna,* 20 I. & N. Dec. 399, 400 (BIA 1991). *See also* 8 C.F.R. § 1003.2(b)(1) (a

[1] An alien who wishes to adjust his status to that of a lawful permanent resident but who entered the United States without inspection or parole must, under INA § 245(i), (1) submit an application; (2) pay a fee of $1,000; (3) be eligible "to receive an immigrant visa and [be] admissible to the United States for permanent residence; and (4) an immigrant visa [must be] immediately available to the alien at the time the application is filed." 8 U.S.C. § 1255(i).

"motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the prior Board decision and shall be supported by pertinent authority").

With respect to Khalil's motion to reopen, the Board concluded that the October 14, 2005 DOL correspondence was available and could have been presented at the former hearing. *See* 8 C.F.R. § 1003.2(c)(1) ("A motion to reopen proceedings shall not be granted unless it appears to the Board that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing"). Moreover, Khalil had not shown that this evidence was material, *see id.*, in light of evidence previously submitted reflecting that he was substituted for the previous beneficiary well after April 30, 2001. The Board noted that the evidence submitted with the motion to reopen conflicted with the evidence submitted to the IJ, and Khalil had not explained the discrepancy. The Board stated:

> The implication of the current motion is that the respondent himself was the original beneficiary of an April 30, 2001, filing by his current employer. However, his prior attorney submitted evidence indicating a different state of affairs. That earlier evidence reflected that the respondent's April 30, 2001, filing date resulted from his being substituted on the application of another individual and through a different employer. The respondent has not explained why the record would disclose this sequence of events if he

> was at all times the beneficiary of a qualifying petition.

(Board of Immigration Appeals Decision, 2/19/08, at 2.) The Board then noted that, as the current cut-off date for employment-based visas was now November 1, 2002, and Khalil's priority date of May 15, 2006, as shown on the I-797C, Notice of Action was after the current cut-off date, a visa was not immediately available to him, as required by INA § 245(i)(2)(B), 8 U.S.C. § 1255(i)(2)(B). Consequently, Khalil failed to establish prima facie eligibility for adjustment of status and a basis for granting the motion to reopen.

Khalil did not petition for review of the Board's February 19, 2008 decision. Instead, he filed another motion for reconsideration and motion to reopen pro se, essentially repeating his prior assertions, and asserting that he was eligible to apply for adjustment of status because his priority date would become current in the near future. In a decision dated June 10, 2008, the Board denied the motion to reopen as time and number-barred. 8 C.F.R. § 1003.2(c)(2). The Board further decided that Khalil had no new evidence to justify reopening removal proceedings.[2] With respect to the motion for reconsideration, to the extent that it was timely, the Board denied it as an impermissible second motion for reconsideration, *see*

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[2] The Board has the authority in the event of exceptional circumstances to reopen proceedings sua sponte without regard to the time and number limitations. *See* 8 C.F.R. § 1003.2(a).

8 C.F.R. § 1003.2(b)(2). Moreover, the motion failed to specify any errors of fact or law in the Board's previous decision. In fact, Khalil's priority date still was not current. Khalil petitions for review of this decision.

We will deny the petition for review. As a threshold matter, we do not have jurisdiction to review the Board's February 19, 2008 decision, because Khalil did not file a timely petition for review of that decision. *See* 8 U.S.C. § 1252(b)(1) (providing for 30-day deadline in which to file petition for review); *Stone v. Immigration & Naturalization Serv.*, 514 U.S. 386, 398-99 (1995) (timely motion to reopen or reconsider does not toll running of filing period for review of Board's underlying removal order). The petition for review was filed on July 2, 2008, within thirty days of the Board's June 10, 2008 decision, but not within thirty days of the Board's February 19, 2008 decision. Therefore, the petition is timely only with respect to the June 10, 2008 decision.

The time limit for filing a petition for review is mandatory and jurisdictional. *See McAllister v. U.S. Attorney Gen.*, 444 F.3d 178, 185 (3d Cir. 2006). Khalil contends in his informal brief that he is entitled to apply for adjustment of status based on the argument that, because his current employer Port Said filed a labor certification prior to April 30, 2001, he is eligible to take advantage of the "grandfathering" clause. However, this argument, the resolution of which required the Board to address conflicting evidence in the record, was directly addressed in the Board's

February 19, 2008 decision, over which we lack jurisdiction. It was in that decision that the Board held that Khalil is not eligible to apply for adjustment of status pursuant to 8 U.S.C. § 1255(i), because he did not have an approvable labor certification filed on or before April 30, 2001. Our review, however, is limited to the Board's June 10, 2008 decision.

With respect to the Board's June 10, 2008 decision, our authority to review a final removal order of the Board arises under INA § 242(a), 8 U.S.C. § 1252(a). Review of the Board's denial of a motion to reopen and motion for reconsideration is for abuse of discretion only. *See Sevoian v. Ashcroft,* 290 F.3d 166, 174 (3d Cir. 2002). *See also Immigration & Nationality Serv. v. Doherty,* 502 U.S. 314, 323 (1992). "Discretionary decisions of the [Board] will not be disturbed unless they are found to be arbitrary, irrational, or contrary to law." *Tipu v. Immigration & Nationality Serv.,* 20 F.3d 580, 582 (3d Cir. 1994) (internal quotations and citation removed).

We conclude that the Board did not abuse its discretion in denying Khalil's second motion to reopen and second motion for reconsideration. The Board correctly determined in denying the motion to reopen that it was time and number barred, 8 C.F.R. § 1003.2(c)(2). *See also* 8 U.S.C. § 1229a(c)(7). Only one motion to reopen is permitted, *id.*, and this was Khalil's second, and since the Board's original decision was dated October 10, 2007, the current motion, filed on March 13, 2008, was untimely in that it was not filed within 90 days of that decision, *id.*

Furthermore, a "motion to reopen proceedings shall state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits or other evidentiary material." 8 C.F.R. § 1003.2(c)(1). The Board correctly determined that the second motion to reopen presented no new evidence.

For similar reasons, the Board did not abuse its discretion in denying the motion for reconsideration. An alien may file one motion to reconsider within thirty days of the date of the decision. 8 U.S.C. § 1229a(c)(6); 8 C.F.R. § 1003.2(b)(2). The regulations do not authorize an alien to seek reconsideration of a decision denying a previous motion to reconsider. 8 C.F.R. § 1003.2(b)(2). We further agree with the Board that there also was no basis for reconsidering the prior decision in that Khalil failed to specify any error of fact or law in the Board's previous decision. 8 C.F.R. § 1003.2(b)(1). To the contrary, Khalil still had not shown that his priority date for adjustment of status was current.[3]

For the foregoing reasons, we will deny the petition for review.

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[3] The government has noted in its brief, *see* Appellee's Brief, at 13 n.1, that Khalil's priority date still is not current, *see* Department of State Visa Bulletin, Vol. IX, No. 1 (October 2008).

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-2961

AMR MOHAMMED KHALIL,

Petitioner

v.

ATTORNEY GENERAL OF THE UNITED STATES

Petition for Review of an Order of the
United States Department of Justice
Board of Immigration Appeals
(Agency No. A79-701-674)
Immigration Judge: Frederic G. Leeds

Submitted Pursuant to Third Circuit LAR 34.1(a)
February 2, 2009

Before: RENDELL, FUENTES and
NYGAARD, Circuit Judges.

JUDGMENT

This cause came to be heard on the record from a Petition for Review of an Order entered on June 10, 2008, of the United States Department of Justice, Board of Immigration Appeals and was submitted

pursuant to Third Circuit LAR 34.1(a) on February 2, 2009. On consideration whereof, it is now here

ORDERED and ADJUDGED by this Court that the Petition for Review is hereby DENIED. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/Marcia M. Waldron,
Clerk

Dated: February 5, 2009

Decision of the Board of Immigration Appeals

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

File: A79 701 674 – Newark, NJ Date: OCT 10, 2007

In re: AMR MOHAMMED KHALIL a.k.a.
Amr Mohammed Fathi
Abbas Mohammed Kalil

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Jeffrey N. Lisnow, Esquire

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] – In the United States in violation of law

APPLICATION: Continuance; remand

ORDER:

PER CURIAM. Contrary to the respondent's arguments on appeal, we find no error in the Immigration Judge's May 25, 2006, decision denying his request for a further continuance to allow him to await the approval of his pending application for a labor certification in order to apply for adjustment of status under section 245(i) of the Immigration and Nationality Act, 8 U.S.C. § 1255(i). The decision to grant or deny a continuance is committed to the discretion of the Immigration Judge, if good cause is

shown. *See* 8 C.F.R. § 1003.29. The Immigration Judge noted that the case had been continued several times, but that the respondent's application for a labor certification had still not been approved. The Immigration Judge committed no error when he denied the respondent's request for yet another continuance.

During the pendency of the appeal, the respondent filed a motion to remand the record in order to apply for adjustment of status. In support of his motion, the respondent submitted a Notice of Action (Form I-797C) indicating that he is the beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140).[1] A review of the record reveals that a company called OSRIF Management filed an application for a labor certification on behalf of a woodworker named Madour Arezki on April 30, 2001. The respondent's name was substituted for that of Mr. Arezki in February 2004. However, in June 2005, a company called Port Said Food and Halal Meat filed an application for a labor certification on the respondent's behalf to work as a cook. An I-140 was filed on the respondent's behalf in August 2006, and was approved in April 2006 with a priority date of May 15, 2006.

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[1] The respondent indicates in his motion to remand that the U.S. Citizenship and Immigration Services properly noted his A# as A79 701 674 in a receipt notice pertaining to the Petition for Alien Worker (Form I-140) filed on his behalf, but noted an A# of A99 797 712 in the Notice of Action (Form I-797C) indicating that the Form I-140 has been approved.

The regulations provide that a "beneficiary" whose visa petition or application for labor certification was "properly filed" on or before April 30, 2001, and which was "approvable when filed" would be deemed a "grandfathered alien" and eligible to apply for adjustment of status if the other requirements are met. *See* 8 C.F.R. §§ 1245.10(a) (b). However, an alien who was substituted for the previous beneficiary of an application for a labor certification after April 30, 2001, will not be considered a "grandfathered" alien. *See* 8 C.F.R. § 1245.10(j) Because the respondent was substituted for the previous beneficiary in February 2004, he not considered a "grandfathered" alien and cannot take advantage of the April 30, 2001, priority date. The current cut-off date for third preference employment-based visas is August 1, 2002. *See* Department of State Visa Bulletin, Vol. VIII, No. 111 (October 2007). Because the respondent's priority date is after the current cut-off date, a visa is not immediately available to him as required by statute. *See* section 245(i)(2)(B) of the Act. Consequently, the respondent is not presently eligible for adjustment of status. As the respondent has failed to establish *prima facie* eligibility for adjustment of status, we find that he has not met the requirements for granting a motion respondent's appeal is dismissed, and his motion to remand is denied.

/s/ [Illegible]
FOR THE BOARD

U.S. Citizenship and Immigration Services

I-797, Notice of Action

THE UNITED STATES OF AMERICA		
RECEIPT NUMBER LIN-06-245-50450	CASE TYPE I140 IMMIGRANT PETITION FOR ALIEN WORKER	
RECEIPT DATE August 21, 2006	PRIORITY DATE May 15, 2006	PETITIONER PORT SAID FOOD AND HALAL MEAT
NOTICE DATE April 19, 2007	PAGE 1 of 1	BENEFICIARY A099 797 712 KHALIL, AMR M.
MUNAWAR H. SANDHU 74 09 37TH AVENUE SUITE 408 JACKSON HEIGHTS NY 11372	**Notice Type:** Approval Notice Section: Skilled Worker or Professional, Sec.203(b)(3)(A)(i) or (ii)	

The above petition has been approved. The petition indicates that the person for whom you are petitioning is in the United States and will apply for adjustment of status. The information submitted with the petition shows that the person for whom you are petitioning is not eligible to file an adjustment of status application at this time.

Additional information about eligibility for adjustment of status may be obtained from the local INS office serving the area where the person for whom you are petitioning lives.

Until the person for whom you are petitioning files an adjustment application, or application for an immigrant visa, this approved petition will be stored in this office. If the person for whom you are petitioning decides to apply for an immigrant visa outside the United States based on this petition, the petitioner should file Form I-824, Application for Action on an Approved Application or Petition, with this office to request that we send the petition to the Department of State National Visa Center (NVC).

The NVC processes all approved immigrant visa petitions that require consular action. The NVC also determines which consular post is the appropriate consulate to complete visa processing. It will then forward the approved petition to that consulate.

The approval of this visa petition does not in itself grant any immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa, for admission to the United States, or for an extension, change, or adjustment of status.

THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

NEBRASKA SERVICE CENTER
U. S. IMMIG. & NATZ. SERVICE
P.O. BOX 82521
LINCOLN NE 68501-2521
Customer Service Telephone: 800-375-5283

U.S. Department of Labor

Employment and Training Administration
Atlanta Processing Center
Harris Tower
233 Peachtree Street, Suite 410 [SEAL]
Atlanta, GA 30303

October 14, 2005

PORT SAID FOOD AND
HALAL MEAT
c/o JED DAVID PHILWIN
JED D. PHILWIN
110 WALL STREET, 21 FLOOR
NEW YORK, NY 10005

ETA Case Number:
A-05284-41117
Alien's Name:
AMR KHALIL
Occupation:
COOK, 35-2014.00
Date of Acceptance
for Processing:
April 30, 2001

Dear PORT SAID FOOD AND HALAL MEAT

The Department of Labor has made a determination on your Application for Permanent Employment Certification (Form ETA 9089) pursuant to 20 CFR §656.24 and as required by the Immigration and Nationality Act (INA), as amended.

Form ETA 9089 has not been certified. A certification cannot be issued as required by Section 212(a)(5)(A) of the INA, as amended. These reasons are outlined in the attachment "Reasons for Denial".

A request for review of this denial may be made to Board of Alien Labor Certification Appeals (BALCA) by

the employer. When seeking review of this determination, the request must be in accordance with the following:

- The request for review must be in writing
- The request must clearly identify the particular labor certification determination from which review is sought
- The request must set forth the particular grounds for the request
- The request must include all the documents which accompany this Final Determination form
- The request for review, statements, briefs, and other submissions of the parties and amicus curiae must contain only legal argument and only such evidence that was within the record upon which the denial of the labor certification was based.
- The request must be mailed to the attention of the Certifying Office who denied the application within **30 calendar days** of the date of the determination.

If this application was denied because it was incomplete or because the employer did not submit documentation requested by the Certifying Officer to finalize review of the application by the date specified, the failure to provide the requested documentation in a timely manner constitutes refusal to exhaust available administrative remedies and the employer

cannot request review of this denial with BALCA as outlined in §656.26.

Failure to request review within 30 calendar days, as specified in §656.26, constitutes a failure to exhaust administrative remedies. If a request for review is not made within 30 calendar days, the denial shall become the final determination of the Secretary. If an application for a labor certification is denied, and a request for review is not made in accordance with the procedures at §656.26(a) and (b), a new application

* * *